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10/808,221	03/23/2004	James L. Vineyard JR.	MTIPAT.178C1	3935

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EXAMINER	
VU, KIEU D	
ART UNIT	PAPER NUMBER
2175	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/808,221	VINEYARD ET AL.	
	Examiner	Art Unit	
	KIEU D. VU	2175	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 April 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,5-11,13-15 and 17-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-2, 5-11, 13-15, and 17-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This Office action is responsive to the Amendment filed on 04/11/08.

Claims 1-2, 5-11, 13-15, and 17-26 are pending.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-2, 5-11, 13-15, 17-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2, 5-11, and 13-20 of U.S. Patent No. 6,727,920 in view of Bertram (US 5134580) and Niwa et al ("Niwa", US 5671366).

Claims 1-2, 5-11, and 13-20 of U.S. Patent No. 6,727,920 substantially teach claims 1-2, 5-11, 13-15, 17-20 of the instant application. Claims 1-2, 5-11, and 13-20 of U.S. Patent No. 6,727,920 do not teach automatically inducing the electronic device to

reboot for operation under the selected operating system. Bertram teaches automatically inducing the electronic device to reboot for operation under the selected operating system (col. 2, lines 9-14) wherein the selected operating system remains the default operating system, absent further user selection (col. 2, lines 9-17). It would have been obvious to one of ordinary skill in the art to increase the flexibility and efficiency of the booting system by automatically inducing the electronic device to reboot for operation under the selected operating system to obtain claims 1-2, 5-11, 13-15, 17-20 of the instant application. Claims 1-2, 5-11, and 13-20 of U.S. Patent No. 6,727,920 do not teach the plurality of operating systems being stored on a user rewritable storage media. Niwa teaches the plurality of operating systems being stored on a user rewritable storage media (Fig. 12, line 61 of col. 5 to line 39 of col. 6, line 62 of col. 11 to line 27 of col. 12). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Niwa's teaching with the motivation being to enhance the flexibility in storing the operating systems.

Claims 21-26 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2, 9-11, 16, 17, and 20 of U.S. Patent No. 6,727,920 in view of the Admitted Prior Art and Niwa et al ("Niwa", US 5671366).

Claims 1-2, 9-11, 16, 17, and 20 of U.S. Patent No. 6,727,920 substantially teach claims 21-26 of the instant application. Claims 1-2, 5-11, and 13-20 of U.S. Patent No. 6,727,920 do not teach automatically loading the default operating system following a time out period. The Admitted Prior Art teaches loading the default operating system following a time out period (page 1, lines 23-25). It would be obvious to one of ordinary

skill in the art, to enhance the efficiency of the booting system by including automatically loading the default operating system following a time out period to obtain claims 21-26 of the instant application. Claims 1-2, 5-11, and 13-20 of U.S. Patent No. 6,727,920 do not teach the plurality of operating systems being stored on a user rewritable storage media. Niwa teaches the plurality of operating systems being stored on a user rewritable storage media (Fig. 12, line 61 of col. 5 to line 39 of col. 6, line 62 of col. 11 to line 27 of col. 12). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Niwa's teaching with the motivation being to enhance the flexibility in storing the operating systems.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 5, 9, and 20, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertram et al ("Bertram", USP 5134580) and Niwa et al ("Niwa", US 5671366).

Regarding claims 1, 9, and 20, Bertram teaches a system for assisting a computer user in selecting an operating system for use on a computer comprising:

an electronic device configured for storing, displaying, and processing information under a selectable one of a plurality of operating systems (col. 2, lines 21-24);

computer program code running on said electronic device, the code implementing the steps of:

providing a graphical user interface on a display, said display comprising a list of the plurality of operating systems available to run on said electronic device (Fig. 1-2) (Fig. 5) (col 4, lines 11-26);

providing an activatible control mechanism for selecting one of the operating systems displayed on said list (Fig. 5) (col. 5, lines 43-57); and

setting a default operating system for a load utility installed on said electronic device to correspond to the operating system selected with the activatible control (col. 2, lines 15-17)(col. 6, lines 1-57); and automatically inducing the electronic device to reboot for operation under the selected operating system (col. 2, lines 9-14) wherein the selected operating system remains the default operating system, absent further user selection (col. 2, lines 9-17). Betram does not teach the plurality of operating systems being stored on a user rewritable storage media. Niwa teaches the plurality of operating systems being stored on a user rewritable storage media (Fig. 12, line 61 of col. 5 to line 39 of col. 6, line 62 of col. 11 to line 27 of col. 12). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Niwa's teaching in Betram's system with the motivation being to enhance the flexibility in storing the operating systems.

Regarding claim 5, Bertram teaches that a change of the default operating system causes a file containing settings for a boot menu to be modified wherein the file specifies the operating system selected (Fig. 5).

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bertram, Niwa, and Shoji et al ("Shoji", USP 6031527)

Regarding claim 11, Bertram fails teach a mechanism to cause the computer to restart, said mechanism for causing the computer to restart being executable by a user. However, this feature is known in the art as taught by Shoji. Shoji teaches the providing a user a selection to restart the computer (col 17, lines 21-22). It would be obvious to one of ordinary skill in the art, having the teaching and Bertram and Shoji before him at the time the invention was made, to modify the interface taught by Bertram to include a feature to allow the user to restart the computer taught by Shoji with the motivation being to give user more control on operating the computer.

6. Claims 6-7 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertram, Niwa, and Lister et al ("Lister ", USP 5966540)

Regarding claims 6-7 and 13-14, Bertram does not teach a mechanism for uninstalling or reinstalling the computer program code. However, this feature is known in the art as taught by Lister. Lister teaches a method and apparatus for uninstalling or reinstalling application (col 2, lines 32-43; col 3, lines 9-11). It would be obvious to one of ordinary skill in the art, having the teaching and Bertram and Lister before him at the time the invention was made, to modify the interface taught by Bertram to include a feature to uninstalling or reinstalling application taught by Lister with the motivation being to give user more control on operating the computer.

7. Claims 8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertram, Niwa, and Nguyen et al ("Nguyen", USP 5887163)

Regarding claims 8 and 15, Bertram does not teach that the installing the computer program code surveys the computer and determines the presence of operating systems available on said computer and the partition on which the operating system resides. However, this feature is known in the art as taught by Nguyen. Nguyen teaches about the partitions in a physical hard drive (Fig. 1; col 1, lines 19-33). It would be obvious to one of ordinary skill in the art, having the teaching and Bertram and Nguyen before him at the time the invention was made, to modify the interface taught by Bertram to include the partitioning a physical hard drive taught by Nguyen with the motivation being to give user more control on operating the computer.

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bertram, Niwa, and Dean et al ("Dean", USP 6202206)

Regarding claim 17, Bertram teaches a graphical user interface on a display, said display comprising a first display region having a list of the plurality of operating systems available to run on said electronic device (Fig. 1-2) (Fig. 5) (col 4, lines 11-26)

providing an activatible control mechanism for selecting one of the operating systems displayed on said list (Fig. 5) (col. 5, lines 43-57); and

setting a default operating system for a load utility installed on said electronic device to correspond to the operating system selected with the activatible control (col. 2, lines 15-17)(col. 6, lines 1-57); and

automatically inducing the electronic device to reboot for operation under the selected operating system, wherein the selected operating system remains the default operating system, absent further user selection (col. 2, lines 9-17).

Betram does not teach the plurality of operating systems being stored on a user rewritable storage media. Niwa teaches the plurality of operating systems being stored on a user rewritable storage media (Fig. 12, line 61 of col. 5 to line 39 of col. 6, line 62 of col. 11 to line 27 of col. 12). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Niwa's teaching in Betram's system with the motivation being to enhance the flexibility in storing the operating systems.

Bertram does not teach a second display region including a user activatible control to select one of the available operating systems. However, this feature is known in the art as taught by Dean. Specifically, Dean teaches a display region including a user activatible control so that the user can enter user's choice (Fig. 6). It would be obvious to one of ordinary skill in the art, having the teaching and Bertram and Dean before him at the time the invention was made, to modify the interface taught by Bertram to include user activatible control taught by Dean with the motivation being to enable users to easily control the interface.

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bertram, Niwa, Dean, and Stein ("Stein", USP 5684952)

Regarding claim 18, Bertram does not teach a third display region for initiating a command to restart the computer, said third region including user activatible controls to specify when the computer should restart. However, this feature is known in the art as

taught by Stein. Specifically, Stein teaches a region including user activatible controls to specify when the computer should restart (Fig. 9). It would be obvious to one of ordinary skill in the art, having the teaching and Bertram and Stein before him at the time the invention was made, to modify the interface taught by Bertram to include user activatible control taught by Stein with the motivation being to enable users to easily control the interface.

10. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bertram, Niwa, Dean, and Dougherty ("Dougherty", USP 6076734).

Regarding claim 19, Bertram does not teach that the interface is displayed upon clicking an icon of a boot. However, this feature is known in the art as taught by Dougherty. Specifically, Dougherty teaches the use of metaphoric icons to represent objects (col 1, lines 56-65). It would be obvious to one of ordinary skill in the art, having the teaching and Bertram and Dougherty before him at the time the invention was made, to modify the interface taught by Bertram to include the use of metaphoric icons taught by Dougherty to enable the user to easily access the interface.

11. Claims 2, 10, 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertram, Niwa, and the Admitted Prior Art.

Regarding claims 2 and 10, Bertram does not teach a mechanism to allow a user to set a duration of time comprising a time out period during which the load utility pauses and allows a user to specify an operating system other than the default operating system. The Admitted Prior Art teaches setting set a window of time comprising a time out period during which the load utility pauses and allows a user to specify an operating system other than the default operating system (page 1, lines 13-

16). It would be obvious to one of ordinary skill in the art, having the teaching and Bertram and Admitted Prior Art before him at the time the invention was made, to enhance the time efficiency of the interface taught by Bertram by including set a window of time comprising a time out period during which the load utility pauses and allows a user to specify an operating system.

Regarding claims 21 and 24, Bertram teaches a graphical user interface on a display, said display comprising a first display region having a list of the plurality of operating systems available to run on said electronic device (Fig. 1-2) (Fig. 5) (col 4, lines 11-26). ;

providing an activatible control mechanism for selecting one of the operating systems displayed on said list (Fig. 5) (col. 5, lines 43-57); and

setting a default operating system for a load utility installed on said electronic device to correspond to the operating system selected with the activatible control (col. 2, lines 15-17)(col. 6, lines 1-57); and

automatically inducing the electronic device to reboot for operation under the selected operating system, wherein the selected operating system remains the default operating system, absent further user selection (col. 2, lines 9-17).

Betram does not teach the plurality of operating systems being stored on a user rewritable storage media. Niwa teaches the plurality of operating systems being stored on a user rewritable storage media (Fig. 12, line 61 of col. 5 to line 39 of col. 6, line 62 of col. 11 to line 27 of col. 12). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Niwa's teaching in Betram's

system with the motivation being to enhance the flexibility in storing the operating systems.

Bertram does not teach automatically loading the default operating system following a time out period. The Admitted Prior Art teaches loading the default operating system following a time out period (page 1, lines 23-25). It would be obvious to one of ordinary skill in the art, having the teaching and Bertram and Admitted Prior Art before him at the time the invention was made, to enhance the efficiency of the interface taught by Bertram by including automatically loading the default operating system following a time out period.

Regarding claims 22 and 25, Bertram, modified by the Admitted Prior Art, teaches setting a duration of time comprising a the time out period during which the load utility pauses and allows a user to specify the default operating system (The Admitted Prior Art, page 1, lines 23-25).

Regarding claims 23 and 26, Bertram, modified by the Admitted Prior Art, teaches specifying an operating system of choice on an electronic device and comprising restarting the electronic device in response to an input made via an input device calling for the electronic device to restart (The Admitted Prior Art, page 1, lines 23-25).

12. Applicant's arguments filed on 04/11/08 have been fully considered.

Applicant argues that Betram does not teach the selected operating system remains the default operating system, absent further user selection. However, inducing the electronic device to reboot for operation under the selected operating system, this

teaching is found in col. 2, lines 15-17 where Betram teaches that the chosen OS is retained on the next power-on sequence.

Other arguments are moot in view of new ground of rejection.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kieu D. Vu. The examiner can normally be reached on Mon - Thu from 7:00AM to 3:00PM at 571-272-4057.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Bashore, can be reached at 571-272-4088.

The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

571-273-8300

and / or:

571-273-4057 (use this FAX #, only after approval by Examiner, for "INFORMAL" or "DRAFT" communication. Examiners may request that a formal paper / amendment be faxed directly to them on occasions).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Kieu D Vu/
Primary Examiner, Art Unit 2175